IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15701 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TARABEN,DAUGHTER OF MATAR-PRASAD AND WIFE OD DAYASHANKER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15701 of 2003

MR AJ PATEL for Petitioner No. 1

Mr. KD Pandya, AGP for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 1

..... for Respondent No. 3-3/2

NOTICE UNSERVED for Respondent No. 3/3

MR BHARAT R PATEL for Respondent No. 3/4,3/6-3/7

UNSERVED-EXPIRED (N) for Respondent No. 3/5

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 12/07/2004

ORAL JUDGEMENT

Rule. Shri KD Pandya, learned AGP waives service of Rule on behalf of respondents No. 1 and 2 and Shri JR Nanavaty with Shri Bharat Patel, learned advocate waives

service of Rule on behalf of respondent No.3. With consent of the parties, the matter is taken up for Final Hearing today.

2. What is challenged in the present petition under Article 226/227 of the Constitution of India is the judgment and order dated 19.9.2003/15.10.2003 passed by the revisional authority, i.e., learned Special Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad, in Revision Application No. 7 of 2002 in dismissing the same.

3. Shri AJ Patel, learned advocate appearing on behalf of the petitioners has made a grievance that the learned Special Secretary has dismissed the revision application without giving any opportunity. He has submitted that all throughout the hearing was fixed by the learned Special Secretary on the application submitted by the respondent No.3 for vacating the ad-interim relief granted earlier. Therefore, when the hearing was fixed to decide whether the interim relief granted earlier should be continued or not, it was not open for the learned Special Secretary to decide and dispose of the revision application finally. For that purpose, he has relied upon various notices issued from the office of learned Special Secretary.

4. Shri JR Nanavaty with Shri Bharat Patel, learned advocate appearing on behalf of respondent No.3, has submitted that in view of the fact that suits are pending before the competent Civil Court this Court exercising the powers under Article 226 of the Constitution of India should not entertain the petition on hand. However, he is not in position to support the order passed by the learned Special Secretary dismissing the revision application while adjudicating the question with regard to continuing the interim relief or not. Shri pandya is also not in a position to support the judgment and order passed by the revisional authority dismissing the revision application when the hearing was fixed by the learned Special Secretary to decide whether to continue or vacate the ad-interim relief granted earlier.

5. Heard the learned advocates appearing on behalf of the parties. From the notices which are at Annexures 'O' and 'P' collectively, it is crystal clear that the hearing was fixed by the learned Special Secretary to consider whether the interim relief granted earlier by him should be vacated or not on the basis of the application submitted by the respondent No.3, but all of a sudden without fixing a date for final hearing and/or

without hearing the matter finally straightway the learned Special Secretary has dismissed the main revision application itself. When the hearing was fixed by the learned Special Secretary for consideration of continuing or vacating the ad-interim relief granted earlier he should not have dismissed the revision application without giving opportunity of hearing to the petitioner. On this ground alone, the present Special Civil Application is allowed. The impugned order passed by the revisional authority, i.e., learned Special Secretary dated 19.9.2003/15.10.2003 in Revision Application No. 7 of 2002 is hereby quashed and set aside. The matter is remanded to the revisional authority for deciding the Revision Application No. 7 of 2002 afresh in accordance with law and on merits after giving opportunity of being heard to the petitioner. Rule is made absolute accordingly.

[M.R. Shah, J.]

rmr.